

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

WENDELL H. STONE COMPANY, INC. d/b/a
STONE & COMPANY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SEABOARD INTERNATIONAL FOREST
PRODUCTS, LLC, a Delaware limited liability
company,

Defendant.

Civil Action No. 1:17-cv-00035-SM

MOTION TO DISMISS¹
Fed. R. Civ. P. 12(b)(1) & 12(b)(6)

NOW COMES the Defendant, Seaboard International Forest Products, LLC (“Seaboard”), by and through its counsel of record, and moves this Court for an Order dismissing the above-captioned action with prejudice under Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, dismissing the Complaint’s Second Cause of Action with prejudice under Federal Rule of Civil Procedure 12(b)(6), and in support thereof states as follows:

1. This lawsuit is one of eight lawsuits that Plaintiff Wendell H. Stone Company, Inc. and its Colorado class-action counsel have filed against assorted businesses in an apparent attempt to profit from alleged technical violations of the Telephone Consumer Protection Act of

¹ In accordance with Local Rule 7.1(d), and in light of recent case developments related to TCPA fax litigation and to assist the Court, Seaboard respectfully requests the Court grant oral argument on its Motion.

1991 (“TCPA”) through facsimile advertisement (“fax ad”) litigation.²

2. The Complaint should be dismissed in its entirety pursuant to Rule 12(b)(1), in that Plaintiff lacks Article III standing because the injury pleaded, if it occurred at all, is *de minimis* and, moreover, the purported injury is not traceable to any act or failure to act by Seaboard.

3. In the alternative, the Second Cause of Action should be dismissed pursuant to Rule 12(b)(6), in that this part of the Complaint fails to state a claim based on the Fax Quote which is attached to the Complaint. The Fax Quote on its face shows that Seaboard’s opt-out notification fully complied with every requirement of the TCPA, in that the fax conspicuously informed any person who cared to opt-out of receiving future fax ads about several means to do so.

4. In further support of this Motion, Seaboard respectfully submits herewith and incorporates herein by reference, the Defendant’s Memorandum of Law in Support of Motion to Dismiss, the arguments of counsel, all of the pleadings and attachments thereto, files, records, and proceedings herein.

WHEREFORE, in accordance with the foregoing, Seaboard respectfully requests that this

² Seaboard requests that the Court take judicial notice of the following suits by Plaintiff and its counsel under Federal Rule of Evidence 201, *see Rodi v. S. New England Sch. of Law*, 389 F.3d 5, 18-19 (1st Cir. 2004) (noting that judicial notice may be taken of filing, nature, and disposition of other actions): *Wendell H. Stone Co., Inc. v. LKQ Corp.*, No. 16-cv-07648 (N.D. Ill. filed July 28, 2016); *Wendell H. Stone Co., Inc. v. Royal Ten Cate (USA), Inc.*, No. 16-cv-00189 (N.D. Ga. filed Aug. 4, 2016); *Wendell H. Stone Co., Inc. v. Chesapeake Plywood, LLC*, No. 16-cv-02821 (D. Md. filed Aug. 10, 2016); *Wendell H. Stone Co., Inc. v. Metal Sales Mfg. Corp.*, No. 16-cv-01219 (W.D. Pa. filed Aug. 11, 2016); *Wendell H. Stone Co., Inc. v. Glenn Family, Inc.*, No. 16-cv-01218 (W.D. Pa. filed Aug. 11, 2016); *Wendell H. Stone Co., Inc. v. Metal Partners Rebar, LLC*, No. 16-cv-08285 (N.D. Ill. filed Aug. 23, 2016); *Wendell H. Stone Co. Inc. v. US Block Windows Inc.*, No. 16-cv-00533 (N.D. Fla. filed Oct. 6, 2016); *Wendell H. Stone Co., Inc. v. Seaboard Int’l Forest Products, LLC*, No. 17-cv-00035 (D.N.H. filed Jan. 31, 2017).

Honorable Court enter an Order:

1. Granting this Motion and dismissing the above-captioned action with prejudice;
- and
2. Granting any and all additional relief the Court deems necessary and just.

Respectfully submitted,

SEABOARD INTERNATIONAL FOREST
PRODUCTS, LLC

By its attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

and

STOEL RIVES LLP

Dated: April 17, 2017.

By: /s/ Thomas A. Woods

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